

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JULIE DELANEY and  
WILLIAM DELANEY

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 05-CV-10241 (MLW)

**PLAINTIFFS' OPPOSITION TO DEFENDANT ELI LILLY'S  
MOTION TO STRIKE THE AFFIDAVIT OF HAROLD B. SPARR, R.Ph.**

COME NOW the Plaintiffs and oppose Defendant Eli Lilly and Company's Motion to Strike the Statement of Harold B. Sparr, R.Ph., and as grounds therefore states:

1. Whether pharmacist or investigator, Mr. Sparr is competent to speak to the question: "What was the most popular brand of DES sold in the Boston area and its environments (which includes Hingham) in 1970?" This is a complex and fact-intensive question which can only be analyzed by this Court after an opportunity to hear and observe Mr. Sparr on the stand, thereby enabling this Court to make an informed assessment of his competence and the grounds of his opinions.

2. Mr. Sparr's assertion that Lilly's DES was ubiquitous and the most popular DES in the Boston Area was based on five different sources and investigations, not merely his conversations with pharmacists. (See Plaintiffs' Opposition to Motion for Summary Judgment pending.)

3. Defendant Lilly fragments Mr. Sparr's testimony, statements, reports and affidavits (which were provided to Lilly in dozens of cases spanning years), and ignores the

totality of his testimony, which is an integral part of Plaintiffs' proof and thus relevant and material even though in and of itself, it may not be sufficient to prove the questions.

4. Mr. Sparr's Statement and deposition testimony are neither contradictory nor speculative when viewed in their totalities. Defendants have splintered, twisted and decontextualized the dozen various Sparr statements to form a splintered misrepresentation.

Never has Mr. Sparr retreated from his opinion and observation that Lilly was the most popular DES in the Boston area to a 94% degree of market invasion.

**WHEREFORE**, Plaintiffs pray the court to deny the Defendant's Motion to Strike the Affidavit of Harold B. Sparr, R. Ph.

Respectfully submitted,

/s/ Erica Tennyson

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Dated: December 4, 2006

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I, Erica Tennyson, hereby certify that this document filed through the ECF system, Plaintiffs' Opposition to Defendant Eli Lilly's Motion to Strike the Affidavit of Harold B. Sparr, R.Ph., will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on December 4, 2006.

/s/ Erica Tennyson

Erica Tennyson (BBO# 660707)

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

I hereby certify that, pursuant to L.R., D. Mass. 7.1(A)(2), I have been informed that counsel for both parties conferred on November 20, 2006 and attempted in good faith to resolve or narrow the issues, but were unable to come to a resolution.

/s/ Erica Tennyson

Erica Tennyson (BBO# 660707)